IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
      Christian Schoenfeld

Application No.: 10/693,423	Confirmation No.: 6045
Filed: October 24, 2003	Art Unit: 2454
For: ADAPTING A USER INTERFACE ON A DISPLAY DEVICE OF A PROTOCOL TESTER	Examiner: Vu, Viet Duy

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is an appeal from the Examiner's final rejection of the above-identified application as set forth in the Final Office Action dated October 24, 2008 ("Final Action").

This brief contains items under the following headings as required by 37 C.F.R. § 41.37(c) and M.P.E.P. § 1205.02:

I.	Real Party In Interest
II	Related Appeals and Interferences
III.	Status of Claims
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I.   REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Tektronix, Inc., an Oregon corporation, which is a subsidiary of Danaher Corporation, a Delaware corporation.

II.   RELATED APPEALS AND INTERFERENCES

There are no prior or pending appeals, interferences or judicial proceedings known to Appellants, Appellants' legal representative or assignee which may be related to, directly affect or have a bearing on the Board's decision in this appeal.

III.   STATUS OF CLAIMS

A.   Total Number of Claims in Application

Claims 1, 2, 4 - 10, and 12 - 21 are pending in the application and stand finally rejected under 35 U.S.C. § 103.

B.   Current Status of Claims

Claims canceled: 3, 11

Claims withdrawn from consideration but not canceled: None.

Claims pending: 1, 2, 4 - 10, and 12 - 21.

Claims allowed: None.

Claims rejected: 1, 2, 4 - 10, and 12 - 21.

C.   Claims on Appeal

The claims on appeal are claims 1, 2, 4 - 10, 12 - 16, 20 and 21.

IV.   STATUS OF AMENDMENTS

No amendments have been submitted by Appellants after the Examiner's final rejection.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

A summary of the claimed subject matter is provided, with reference to page numbers

and line numbers and to the item numbers identified in the Figures.

Independent claim 1 is directed to a method of adapting a user interface on a display device of a protocol tester having a visual network plan which is used for the configuration of a telecommunication measurement task by a user. (Page 2, lines 17-23; page 6, lines 15-22; page 9, lines 19-22; Figure 1, ref. nos. 10, 12). The method comprises the steps of generating the visual network plan by the protocol tester from a text file for a description of a graphical user interface. (Page 3, lines 12-14; page 8, lines 12-13; pages 14-15). The method further comprises modifying the visual network plan on the display device in comparison to a basic network plan according to which hardware and/or software exists in the protocol tester. (Page 2, lines 21-24; page 6, line 22 – page 7, line 2; page 8, lines 2-6; page 9, lines 22-24). The text file defines only the position and connections of elements of the visual network plan. (Page 4, lines 4-5 and 17-18; pages 14-15). An interpreter marks the elements for which a selection exists and/or which may be used for the configuration of the telecommunication measurement task according to the hardware and/or software of the protocol tester. (Page 4, line 17 – page 5, line 4).

Claim 17 is directed to a method of displaying a network plan on a measurement device. (Page 2, lines 17-21; page 6, lines 15-19; page 9, lines 19-22; Figure 1, ref. nos. 10, 12). The method comprises the steps of generating a visual network plan from a text file. (Page 3, lines 12-14; page 4, lines 4-5 and 17-18; page 8, lines 12-13; pages 14-15). The method comprises identifying a measurement task selected by a user. (Page 2, line 21 – page 3, line 3; page 3, lines 8-10; page 8, lines 2-6). The method further comprises modifying the visual network plan based upon the measurement task selected by the user. (Page 2, lines 21-24; page 3, lines 8-10; page 4, lines 15-21; page 6, line 22 – page 7, line 5; page 8, lines 2-6). The method comprises displaying the modified visual network plan on the measurement device. (Page 2, line 17 – page 3, line 3; page 3, lines 8-12; page 6, line 19 – page 7, line 5).

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 2, 4-10, 12-16, 20 and 21 are unpatentable under 35 U.S.C. § 103(a) as being obvious based on U.S. Patent Publication No. 2003/0225876 to Oliver, et al (hereinafter "Oliver").

VII.   ARGUMENT

A.   Claims 1, 2, 4-10, 12-16, 20 and 21 are patentable over the Oliver publication

Claims 1, 2, 4-10 and 12-21 stand finally rejected as unpatentable under 35 U.S.C. § 103(a) as being obvious in view of the Oliver publication.

1.   The Oliver reference

The Oliver publication is directed to a network-management system that monitors and displays performance and capacity information for computer networks. (Abstract). The Oliver system uses graphics similar to weather maps to display information about a network under test. (Abstract). Oliver teaches that a network map may be displayed to show logical or physical interconnections between the network elements. (¶ [0021]). The network map may be stored as network resource model 310 in a master database 300. (Figure 3; ¶ [0034]). The network map is used to determine what network elements should be monitored. (¶ [0022]). Polling agents 220 are used to monitor the network elements. (Figure 2; ¶ [0024]). Each network element may be colored based on the level of performance for a selected metric to give a graphic depiction of the network with color highlighting the performance of the overall network. (¶ [0028]). The user may select performance metric data to be displayed on the network map. (¶ [0054]). The color scheme used on the map may be based on a particular performance metric, multiple performance metrics, a worst-case element, a best performing element, or other conventional coloring scheme. (¶ [0055]). Oliver does not disclose changing the elements or interfaces displayed on the network map. Instead only the colors of the elements are changed on the Oliver map. The colors are selected based upon performance metrics without regard to the capability of the polling agent or the availability to measure performance metrics.

Independent claim 1 recites:

> modifying the visual network plan on the display device in comparison to a basic network plan according to which hardware and/or software exists in the protocol tester.

The Final Action equates the claimed protocol tester to Oliver's polling agent. The Oliver reference does not teach or suggest modifying a network map "according to which

hardware and/or software exists" on the polling agent (i.e. protocol tester) as required in claim 1. Instead, the Oliver system merely modifies the colors displayed on a network map based upon network-under-test performance metrics. The performance metrics include parameters such as processor utilization, disc capacity and application availability in large network computing environments. (Oliver at Abstract). The Oliver reference does not teach or suggest evaluating the capability of the polling agents (i.e. the claimed protocol tester). Moreover, Oliver's network map is not modified or changed in any way to reflect the capabilities of polling agents or protocol testers. Instead, the Oliver display is changed based upon characteristics of the network elements under test. (*See*, Oliver at Figure 1, ref. nos. 110, 120, 140; ¶¶ [0021]-[0026]). Oliver fails to teach or suggest "modifying the visual network plan . . . according to which hardware and/or software exists in the protocol tester" as required in claim 1.

The Final Action cites Oliver's modification of colors of the network elements as the claimed "modifying the visual network plan." Final Action at 2. However, modification of the display colors is not a modification of the claimed "visual network plan." The term "visual network plan" as used in the present application means the position and connections of the network elements. (Claim 1; Specification at page 4, lines 17-18, and page 6, lines 10-12; Figure 1.) Oliver does not teach or suggest modifying the position and connections of the network elements.

Furthermore, even if the term "visual network plan" is read broadly enough to mean just the colors used in the network display, the colors of the network map in Oliver are <u>not</u> modified or changed to reflect the capabilities (i.e. hardware and software) of the Oliver performance monitor. More importantly, Oliver's paragraphs [0054]-[0055] - which were cited at page 2 of the Final Action - do not address the hardware or software that is loaded (i.e. "existing") on a protocol tester, such as Oliver's performance monitor. The cited paragraphs in the Oliver reference merely teach that the color of an object is changed based upon a user-selected performance metric. (*See, e.g.,* ¶ [0055]). Therefore, because Oliver does not determine what hardware or software exists on a protocol tester, Oliver cannot not teach or suggest modifying a visual network plan "according to which hardware and/or software exists in the protocol tester" as required in claim 1.

The Examiner appears to be equating the claim term "exists" with "selected" or

"configured." Oliver teaches that the colors of a display are changed based upon <u>user-selected</u> performance metrics; however, Oliver does not teach or suggest using the actual hardware or software <u>existing</u> (i.e. available) on the protocol tester to modify a network display or visual network plan.

Claim 1 further recites:

> . . . **an interpreter** marks the elements for which a selection exists and/or which may be used for the configuration of the telecommunication measurement task **according to the hardware and/or software of the protocol tester.**

In the Advisory Action dated January 22, 2009 ("Advisory Action"), the Examiner identified Oliver's paragraphs [0054] and [0055] as teaching this feature. However, these paragraphs fail to teach or suggest an interpreter or other device that takes action "according to the hardware and/or software of the protocol tester" as required in claim 1. The Oliver reference includes provides no discussion as to the components and operation of the polling agent – which is equated to the claimed protocol tester. Therefore, Oliver cannot disclose the recited elements of the claimed protocol tester. Furthermore, the Oliver network map is modified only based upon <u>network</u> performance metric data without regard to the <u>polling agent</u> (i.e. protocol tester) capability, operation or construction.

The Oliver system makes no modifications or adjustments to the network display based upon the hardware or software <u>existing</u> in a protocol tester. The only changes or modifications to the network display in the Oliver reference are color changes, which are made based upon a user-selected performance metric. Moreover, cited paragraphs [0054] and [0055] do not disclose software or other component that acts as the claimed "interpreter." If the Examiner alleges that the claimed "interpreter" is inherent in Oliver, then additional facts must be presented showing that such an "interpreter" would be necessarily present in the Oliver system. M.P.E.P. § 2112. Such evidence has not been presented in the pending rejections.

Claims 2, 4-10, and 12-16 depend from independent claim 1 and add further limitations. It is respectfully submitted that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations

Claim 20 recites:

> identifying one or more software application stored on the measurement device.

Claim 21 recites:

> identifying one or more hardware components installed on the measurement device.

As noted above, with respect to claim 1, the Oliver application does not teach or suggest identifying characteristics of a measurement device, such as software applications stored on or hardware components installed on the measurement device. Instead, the Oliver reference is silent as to the components and operation of the polling agent. The Office Action does not specifically point out where these features can be found in Oliver, but instead points generally to paragraph [0025] to reject many of the dependent claims. (Office Action at 3). Paragraph [0025] of Oliver does not teach or suggest identifying software applications or hardware components on the measurement device. Accordingly, claims 20 and 21, which depend from independent claim 17, are allowable over the Oliver reference under 35 U.S.C. § 103(a).

B.   Conclusion

The Oliver reference fails to teach or suggest "modifying the visual network plan," "an interpreter," "identifying one or more software application," or "identifying one or more hardware components." Therefore, the pending claims are patentable over the Oliver application and should be passed to issuance.

For all the reasons discussed above, the rejections of claims 1, 2, 4 - 10, 12 - 16, 20 and 21 should be reversed because the claims relate to patentable inventions that are not rendered obvious by the Oliver reference.

Respectfully submitted,

_____May 8, 2009_____   /Michael J. Fogarty, III/_____
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CLAIMS APPENDIX

1.   A method of adapting a user interface on a display device of a protocol tester having a visual network plan which is used for the configuration of a telecommunication measurement task by a user comprising:

        generating the visual network plan by the protocol tester from a text file for a description of a graphical user interface; and

        modifying the visual network plan on the display device in comparison to a basic network plan according to which hardware and/or software exists in the protocol tester;

        wherein the text file only defines the position and connections of elements of the visual network plan while an interpreter marks the elements for which a selection exists and/or which may be used for the configuration of the telecommunication measurement task according to the hardware and/or software of the protocol tester.

2.   The method according to claim 1 wherein the modifying step further comprises the step of modifying the visual network plan according to a selection made by the user via the user interface of the telecommunication measurement task and/or the configuration of the measurement task.

3.   (Canceled)

4.   The method according to claim 1 wherein the text file comprises information on the position of network elements and on the location of interfaces between the network elements.

5.   The method according to claim 1 further comprising the step of correlating the text file with the hardware and/or software in the protocol tester.

6.   The method according to claim 5 further comprising the step of selecting the text file from a predeterminable quantity of text files.

7.   The method according to claim 5 further comprising the step of generating the text file by the protocol tester according to the hardware and/or software of the protocol tester.

8.   The method according to claim 6 further comprising the steps of:

        selecting or generating several text files according to the hardware and/or software of the protocol tester; and

        offering the several text files to the user for selection.

9.   The method according to claim 6 wherein the selecting step comprises the step of taking into account entries made by the user for specifying the telecommunication measurement task.

10.   The method according to claim 9 further comprising the step of selecting or generating another text file if necessary after a change of the specification of the measurement task is made by the user.

11.   (Canceled)

12.   The method according to claims 1 or 2 further comprising the step of showing on the display device as the visual network plan only a part of the basic network plan being modified.

13.   The method according to claim 12 further comprising the step of marking in a predeterminable way in response to the modifying step those elements which may be configured according to the hardware and/or software of the protocol tester.

14.   The method according to claim 13 wherein the marking step comprises the step of offering graphic selection methods for those elements from which the user selects.

15.   The method according to claim 13 wherein the marking step comprises the step of visually presenting in different ways those elements which may be configured and other elements for which no configuration is possible.

16.   The method as recited in claim 15 wherein the different ways comprise different colors.

17.   A method of displaying a network plan on a measurement device, comprising:
        generating a visual network plan from a text file;
        identifying a measurement task selected by a user;
        modifying the visual network plan based upon the measurement task selected by the user; and
        displaying the modified visual network plan on the measurement device.

18.   The method of claim 17, wherein modifying the visual network plan further comprises:

        associating one or more protocols with a network interface to be tested with the measurement task.

19.   The method of claim 17, wherein modifying the visual network plan further comprises:

        adding a user interface element to the visual network plan, the user interface element providing a user with a selection of protocols to be used with the measurement task.

20.   The method of claim 17, wherein identifying a measurement task further comprises:
        identifying one or more software application stored on the measurement device.

21.   The method of claim 17, wherein identifying a measurement task further comprises:
        identifying one or more hardware components installed on the measurement device.

EVIDENCE APPENDIX

No evidence was submitted pursuant to §§ 1.130, 1.131, or 1.132 and no other evidence was entered by the Examiner.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings identified in this Brief.